

IV. AMENDMENTS TO THE DRAWINGS

--- Replacement and annotated mark-up drawing sheets for amended figures showing the amended figures, if any, are attached at the Appendix hereto. Each figure is in compliance with 37 C.F.R. § 1.84. An explanation of the changes, if any, is set forth below in this “Amendments to the Drawings” section. Replacement drawing sheets are identified in the top margin as “Replacement Sheet.” Any replacement drawing sheet including amended figures includes all of the figures appearing on the immediate prior version of the sheet. Any annotated drawing sheets, if the same are required by the Examiner, are identified in the top margin as “Annotated Marked-Up Drawings.” Any deleted figure is noted by an instruction to delete the figure. Any corresponding amendment to the specification necessary to be made because of an amendment to the drawings in this section is made in the corresponding “Amendments to Specification” section.

- THE DRAWINGS OF THE PATENT IS HEREBY AMENDED AS SET FORTH BELOW:
 - *No Drawings are Present in this Application*
 - *Attachments: None*

V. REMARKS/ARGUMENTS

- STATUS OF THE CLAIMS

Claims 1, 5, 14, 15, 18 - 20 are pending in this application. Claims 1 is currently amended and Claims 18-20 are cancelled.

- REJECTIONS

- REJECTION UNDER 35 U.S.C. §112, First Paragraph

- Examiner's position

The Examiner rejected claims 1, 5, 14 – 15 and 18-20 under 35 U.S.C. § 112, first paragraph, as failing to comply with the enablement requirement. The Examiner again alleges that the term “pre-cooked” is not clear, that it is not clear what exactly is being pre-cooked. Examiner further opines on page 2 of the office action:

There appears to be no further description of what this means or what condition one employs to define the “pre-cooked” term. Also, the context of the phrase “pre-cooked” itself is not clear. “Pre” means before. It is not clear at what point the mixture was pre-cooked.” It is also not clear what is the relationship of “pre-cooking” to the actual cooking step to form the wafer.

On page 3 three of the office action, Examiner further writes

The meaning of pre-cooked is still not clear. It appears that no actual cooking as application of heat is involved in preparation of so-called “pre-cooked” mixture. The “pre-cooked mixture” is merely a mix of starches and water at about room temperature or higher.

- Applicants' Response

The Applicants traverse the rejection of claims 1, 5, and 14 – 15 under 35 U.S.C. § 112, first paragraph. Applicant respectfully asserts that the term “pre-cooked” is clearly defined and satisfies all requirements with respect to 35 U.S.C. §112, First Paragraph. The description fully enables one skilled in the art to make the wafer or wafers.

The term “pre-cooked” is rigorously defined on paragraph [0009] of the specification, where it is stated that:

...a first embodiment of the present invention includes a low gluten wafer including about 1.0 part wheat starch, about 1.0 part pre-gelatinized wheat starch, where the wheat starch and pre-gelatinized wheat starch are combined into a substantially homogenous mixture. The low gluten wafer also includes about 2.0 parts of water having a temperature between about room temperature to about 212 degrees Fahrenheit, where the water is combined with substantially homogenous mixture of wheat starch and pre-gelatinized wheat starch until the entire mixture is substantially homogenous to create a pre-cooked mixture

Under this definition and description of “pre-cooked” one skilled in the art is enabled to make the pre-cooked mixture and further use to the wafers.

Examiner asks “what exactly is being ‘pre-cooked’” in this and other embodiments? The second homogeneous mixture being pre-cooked. Chemical changes in the first homogenous mixture of wheat starch and pre-gelatinized wheat starch initiated by the energy content of the water (temperature) and the mechanical energy derived from converting the first homogeneous mixture and the water into a second homogeneous mixture resulting in what the Applicants describe and define as “pre-cooked.” It is these changes caused by the pre-cooking process that yields the advantageous properties needed for production of a suitable wafer. It is in this context that the Examiner should view the term “pre-cooked.” It should also be noted that the procedure described above was unexpected and required testing many permutations and combinations of component ratios, component addition sequence, and water temperature before discovering a “pre-cooked” mixture that reproducibly yielded a suitable wafer.

Concerning “the Relationship of ‘pre-cooking’ to the actual cooking step to form the wafer,” the chemical changes in the components occur rapidly during the preparation of the pre-cooked mixture and therefore can be immediately baked or baked after sufficient time has elapsed to apply a larger batch of “pre-cooked” mixture to a sheet (see paragraph [0013] of the specification). This addresses the Examiner’s questions concerning water content in the pre-cooked mixture. Since the chemical reactions representing the “pre-cooked” mixture occur rapidly, the actual amount of water may vary between that point in time following the preparation of the pre-cooked material and until that point in time when the pre-cooked material is baked without effecting the quality of the wafer. It is noted in the specification [0015] that

conditions – humid or arid climates – that effect water content may effect baking time rather than the pre-cooking

Finally in view of the comments above, the Applicants disagree with Examiner's conclusion (page 3 of the office action) that: "The 'pre-cooked mixture' is merely a mix of starches and water at about room temperature or higher." To the contrary, chemical reactions requiring specific conditions are required in the preparation of the pre-cooked mixture to yield after baking a wafer acceptable in texture, structure and palatability. Furthermore, Applicants assert that it is incorrect to label the pre-cooked mixture "merely a mix of starches and water" since it represents an empirical determination derived from many permutations and combinations to yield a particular ratio of components, sequence combination, and component temperature.

Accordingly Applicant respectfully asserts that the specification is enabling and satisfies all aspects of *35 U.S.C. §112, First Paragraph* and that the rejection of instant Claims are improper. The Applicants request reconsideration and withdrawal of the rejection of Claims 1, 5, and 14-15.

- REJECTION UNDER 35 U.S.C. §112, Second Paragraph
 - Examiner's position

The Examiner rejected claims 1, 5, 14 – 15 and 18-20 under 35 U.S.C. § 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. The Examiner states on page 2 of the Office Action that "It is not clear how the 'pre-cooked' as it exists can contain water at the recited temperature." The Examiner further states that the meaning of "pre-cooked" is not clear as in the previous section pertaining to *35 U.S.C. §112, First Paragraph* of this office action.

Additionally, Examiner alleges "The claim, as currently written, does not reflect the fact that the water having recited temperature is being added to the starches. It is not clear as to how the 'pre-cooked' mixture as it exists can contain water at the recited temperature, since applicant does not recite that the mixture as claimed is at initial moment of production."

- Applicants' Response

Applicants respectfully traverse the rejection of claims 1, 5, and 14-15 under 35 U.S.C. § 112, second paragraph. Regarding the Examiner's question "of what is pre-cooked" and how the "pre-cooked" mixture as it exists can contain water at the recited temperature, the Applicants respectfully re-enforces comments made above regarding *35 U.S.C. §112, First Paragraph*. Chemical reactions that produce the advantageous properties of the "pre-cooked mixture" occur rapidly due to the transfer of energy from the water (temperature) and mechanical energy derived from the formation of the second homogenous mixture as now amended. This second homogenous mixture is what is "pre-cooked." Accordingly once the pre-cooked mixture is formed (i.e. when the mixture becomes homogeneous), the actual content of water may change prior to baking. However if the content of water does change, it does not effect the final quality of the wafer. For example, the interval of time long enough to apply large batches to cooking sheets between preparation of the pre-cook mixture and baking does not effect quality of wafer – see [0013].

Contrary to the Examiner's opinion on page 4 of the office action, Applicants assert that the Claims do "reflect the fact that water having the recited temperature is being added to the starches." From the portion of the currently amended Claim 1 shown below, it is explicit that the temperature of said water added to the starches claimed is between about 100 and 150 degrees Fahrenheit..

about 50% of a mixture of wheat starch and pre-gelatinized wheat starch to form a first homogeneous mixture combined with 50% of water, said water being at a temperature of between about 100 degrees Fahrenheit and about 150 degrees Fahrenheit and formation of a second homogenous mixture...

Although the addition of water to the starches and formation of a homogeneous mixture is not labeled as the initial point of production of the pre-cooked mixture, it is as claimed the initial point of production of the pre-cooked mixture. As indicated above the water content may change between the time of the preparation of the pre-cooked mixture and the time of baking.

Accordingly, with this additional clarification concerning the nature the pre-cooked mixture and in view of the comments in the previous section, the Applicants assert that the

rejection of Claim 1 and its dependent claims are improper under the statute. Applicants request withdrawal of the rejections of Claims 1, 5, 14, and 15 under 35 U.S.C. §112, second paragraph.

REJECTION UNDER 35 U.S.C. §103(a)

Applicants herein address the Examiner's 103(a) rejections with respect to the claims as set forth in the Examiner's Office Action.

- Examiner's Position

Claims 1, 5, 14 – 15 and 18-20 are rejected under 35 U.S.C. 103(a) as being unpatentable over DE 1927394 to Wernecke in view of applicants' prior art admission. As before the Examiner states that Wernecke discloses a low gluten bread product that contains maximum 0.3% by weight gluten (Abstract) and that Wernecke discloses a low-gluten bread products designed for people suffering from Celiac disease. Furthermore, the Examiner states that Wernecke discloses that pre-gelatinized wheat starch serves as a structure improving component. This reference also discloses baking temperature of 400F.

To the Applicants comment in the 9/17/08 response that in Wernecke " ... it is obvious that the proportion of the pregelatinised wheat starch is clearly less than 10%," the Examiner responded on p9 of the office action:

it is noted that Wernecke discloses dry mixture containing 86.69% of wheat starch component (p.7 of the original document). In response to applicant argument that the references fail to show certain features of applicant's invention, it is noted that the features upon which applicants relies (i.e., percentage of pregelatinized wheat starch) are not recited in the rejected claims(s). In any case, once it was known to employ a mixture of wheat starch and pregelatinized wheat starch as a substitute for wheat flour to produce a low gluten product, the particular concentrations of the ingredients is seen to have been an obvious result effective variable routinely determinable. Although the claims are interpreted in light of the specification, limitations are not read into the claims.

- Applicants' Response

Independent Claim 1 in Respect of the Wernecke (DE 1927394) reference:

Applicants respectfully traverse the Examiner's rejection of claims 1, 5, 14, and 15 with respect to the Wernecke (DE 1927394) reference. Contrary to the Examiner's opinion the Applicants assert that the instant claims are patently distinct from Wernecke in at least two regards. First, the instant claims teach a procedure for preparation of "pre-cooked" mixture neither suggested nor anticipated by Wernecke that lends unexpectedly advantageous features to a final low gluten wafer product. Second, unlike Wernecke, the low gluten wafer product of the instant claims contains substantially equal amount (currently amended Claim 1) of wheat starch and pre-gelatinized wheat starch and no other ingredients. The "pre-cooked" feature of claimed for treating the mixture of wheat starch and pre-gelatinized wheat starch with water "at a temperature of between about 100 degrees Fahrenheit and about 150 degrees Fahrenheit" differentiates the instant claim from the teachings of Wernecke and provides the unexpected and advantageous features of the instant claim. Generally pre-gelatinized wheat starch requires cold water to gelatinize. Applicants incurred many failures and consumed extensive resources experimenting with multiple combinations and permutations of water temperature, amounts and ratios of components to yield an acceptable wafer. Wernecke provides no teaching or the suggestion of success needed to motivate one of ordinary skill to prepare wafers as described in the instant claims.

Secondly, the applicants respectfully submit that contrary to the Examiner, Wernecke teaches a radically different composition of ingredients. Whereas the ingredients of the instant claims are restricted to wheat starch, pregelatinized wheat starch and water, Wernecke additionally includes ingredients such as fat, sugar, tapioca starch, methylcellulose, or carboxymethylcellulose (see Abstract of the Wernecke DE 1927394 reference). In addition, and contrary to the Examiner's opinion, Wernecke (DE 1927394) does not mention that the mixture contains water, i.e., it is simply a dry mixture to which water may be added at some later time.

Furthermore, from the reference cited by the Examiner (Wernecke, DE 1927394), it is obvious that proportion of the pregelatinized wheat starch is clearly less than 10% ("...with added 10% rel. their total weight in a structure improver composed of pectin, pregelatinized waxy maize, pregelatinized wheat starch, or tapioca starch, methylcellulose or carboxymethylcellulose"). However as currently amended in the instant claim 1, the pre-cooked mixture initial contains substantially equal amounts wheat starch and pregelatinized wheat starch

and two parts of water. Applicants further assert that the radically different compositions of ingredients disclosed by Wernecke, effect preparation of the wafer including the preparation of the pre-cooked mixture of the instant claims in a way that cannot be anticipated or suggested from Wernecke.

In summary, Applicants assert that the instant claims are patently distinct in preparation, and in composition and ratio of ingredients.

For the reason described above, the Applicants respectfully submit that the pre-cooked mixture as set forth in independent claim 1 is not disclosed or suggested in the prior art of record (Wernecke (DE 1927394)) and that the rejection of the currently amended instant Claim 1 is improper under the statute. Accordingly, reconsideration and withdrawal of the rejection of claim 1 under 35 U.S.C. paragraph 103(a) are respectfully requested.

- Dependent claims 5, 14 - 17


The Examiner is respectfully directed to note that dependent claims 5, 14, and 15 set forth additional novel features of the present invention. These claims are in condition for allowance due to their dependency from allowable independent claim, as well as for the additional novel limitations set forth therein.

CONCLUSION TO REMARKS

Applicants assert that this response is fully responsive to the Examiner's Office Action dated November 17, 2008. Applicants respectfully seek early allowance of the pending claims.

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Respectfully Submitted,



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VI. APPENDIX

- *No Appendix Included in this Response.*